IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

WEDNESDAY, THE 28TH NOVEMBER 2007 / 7TH AGRAHAYANA 1929

MFA.No. 721 of 2000()

MV(OP).1628/1997 of MOTOR ACCIDENT CLAIMS TRIBUNAL, THRISSUR.
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APPELLANT: PETITIONER

SUNIL KUMAR, S/O. MANI,
RESIDING AT CHUDEKKATTIL HOUSE,
POTTIMADA, VANIYAMPARA,
THRISSUR.

BY ADV. SRI.V.CHITAMBARESH

RESPONDENTS: RESPONDENTS
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1. **MAJEED, S/O. HAMEED, RESIDING AT KARUKUNNEL HOUSE, AVOLI P.O., MUVATTUPUZHA, ERNAKULAM DISTRICT.**

2. **MURALIDHARAN, S/O. CHANDRASEKHARA KURUP, RESIDING AT VELIKKAKATH HOUSE, KAVALAMKODAM, CHERTHALA P.O., ALAPPUZHA DISTRICT.**

3. **THE ORIENTAL INSURANCE COMPANY LIMITED, MATTANCHERRY, ERNAKULAM DISTRICT.**

BY ADV. SRI.P.V.JYOTHI PRASAD

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 28/11/2007 , THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.HEMA, JJ.

M.F.A.No.721 OF 2000

Dated 28th November, 2007

JUDGMENT

Koshy,J.

Appellant/claimant at the age of 20 met with an accident. He claimed a compensation of Rs.3,01,000/=. The Tribunal awarded only Rs.56,000/= with 10% interest from the date of application till realisation. It is the case of the appellant that he has suffered mental disorder due to the accident. The Tribunal considered the above contention . With regard to the certificates produced by the claimant, the Tribunal observed as follows:

> ..... "According to the petitioner, due to the injuries sustained by him, he had developed a psychological disorder like anxiety and irritability and there is recurrent attacks of the same and it is incurable to prove the same he has summoned PW2, who is a pshychiatrist attached to the Aswini Hospital, Thrissur who had treated the petitioner. Ext.X1 case sheet would reveal that due to his anxiety complex the petitioner was referred to PW2, who is the psychiatrist of the said hospital. Several sittings were held as evident from Ext.X1 case file. PW2 has stated that the petitioner developed post concussional syndrome which is a psychiatrical manifestation of head injury. Ext.A8 is the certificate issued by PW2, which states that the petitioner was under her treatment for the last three years for psychiatric disorder. When cross-examined by the learned counsel for the 3rd respondent, PW2 has stated that the said disorder

could be linked with head injury sustained in the accident. But, the statement of PW2 does not inspire confidence in the light of Ext.A9, which is a reference letter issued by PW2 to Dr.Mohan.K.Isaac who is a Professor of Psychiatry of NIMHANS, Bangalore. It shows the correct position as to the cause of the petitioner's Psychiatrical problems. Though it is stated in the said letter that there was disorder in the behaviour pattern of the petitioner a few months after the head injury it is stated in the said letter that the petitioner was having the same intolerable problem even before that. It is stated in the said letter that the petitioner is a pampered boy and he is very extra vagent and his parents find it difficult to meet all his demands. Moreover, Ext.X1 would reveal that the CT scan taken a year before that rules out any neurological problem. So, Ext.A9 referral letter issued by PW2 conclusively proves that the petitioner was having this psychiatrical problem even before the accident. So, it was argued by the learned counsel for the 3rd respondent that the head injury by itself did not cause the present condition of the petitioner. It was also to be remembered that after the accident, the petitioner has joined the Southern Film Institute, Thiruvananthapuram. This is evident from Ext.A12 receipt dated 26.8.1998. I had occasion to see the petitioner while he gave evidence as PW1. There is no visible neurological deficit at present. He could remember all things clearly and he could give cogent answers to the questions put to him. But, considering the fact that the petitioner had sustained a cerebral oedema and a sub archnoid haemorrahge, it is reasonable to presume that the same would cause some discomfort to the petitioner. As I have already pointed out, the petitioner was having some psychiatrical problem even prior to the date of the accident. So, the head injury might have acted as fuel to the fire. So, undoubtedly, there will be some contribution from the injuries sustained by him in the accident also. Hence I am of the view that the petitioner has to be awarded a sum for compensating the same. In the absence of any convincing evidence regarding the exact percentage of disability

> caused by the head injury sustained by the petitioner in the accident, I am of the view that he can be awarded a gross sum on that count on a rough and ready estimate. Hence, I am awarding a sum of Rs.25,000/= on that count."

We agree with the view of the Tribunal that the entire psychological problems are not due to the accident. Even before the accident he was having neurological deficit and psychiatric problems and it cannot be stated that difficulties are due to the injuries sustained by him. For pain and suffering only Rs.8,000/= was awarded. We are of the opinion that considering the nature of injuries, Rs.2,000/= more ought to have been granted for pain and suffering. For medical expenses also another Rs.3,000/= has to be granted. Therefore, appellant is entitled to a total additional amount of Rs.5,000/=, over and above the compensation awarded by the Tribunal. The above amount of Rs.5,000/= should be deposited by the third respondent insurance company with 7.5% interest from the date of application till its deposit. On deposit of the amount, the appellant is allowed to withdraw the same.

The appeal is partly allowed.

J.B.KOSHY
JUDGE

K.HEMA
JUDGE

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